

2006

Maiming the Cubs

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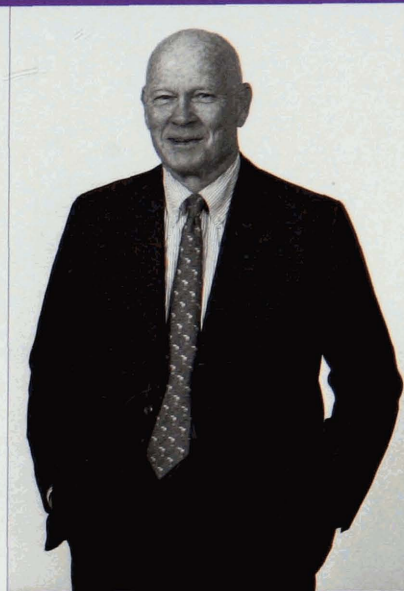
Recommended Citation

White, James J.. "Maiming the Cubs." Law Quad. Notes 49, no. 1 (2006): 69-72. (Excerpted from an article originally published under the same title in Ohio N.U. L. Rev. 32, no. 2 (2006): 287-310.)

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Maiming the cubs by James J. White

The following essay is excerpted from an article published at 32 Ohio Northern University Law Review 287 (2006) and appears here with permission. The complete article expresses the author's skepticism about the meaning of many of the findings reported by proponents of the "humanizing legal education" initiative, and in detail dissects the research methods and conclusions of studies done by G. Andrew H. Benjamin et al in 1986 and by Keenon M. Sheldon and Lawrence S. Krieger in 2004. For more about the "humanizing law school" initiative see www.law.fsu.edu/academic_programs/humanizing_lawschool.html.



In the last 20 years much has been written about the deleterious effect that law school has on the mental well-being of law students. Many have called for "humanizing" law school. In support of their case, the advocates of humanizing cite numerous anecdotes, much scholarly writing in the psychology literature, and even a few rigorous studies of law students.

You should understand that these advocates do not merely claim that we make our students more anxious, more depressed, and generally mentally sicker, but that this sickness may bring about permanent changes that plague our students for years to come. So the claim, at least by inference, is not just that law students are made unhappy by law school, but that they are maimed.

I am skeptical.

In general

It is easy to believe that students are made anxious and even depressed by law school and that the anxiety and depression stay with many students throughout school. It is harder to believe that these stresses cause permanent and irreversible change and that the ills of lawyers are traced in any meaningful way to the stresses of the three years of law school.

Why am I skeptical? A law professor's claim that he or that law school attendance has such influence over his students shows an unbecoming egotism. I am happy if I can get my students to learn some rudimentary rules about the holder in due course doctrine for next week, never mind what effect I might have a year or five years from now. Our students' lives are filled with countless events, dozens of relationships, and a multitude of worries. Only a handful of those events and

worries come directly from law school. How could any law school experience overshadow any one of hundreds of things that happen to each student in the first year after school? Where is the evidence that our pushing them to think like lawyers has turned them permanently off course? To my mind, students are more like sea-going tankers than fragile skiffs; their courses change only slowly and at response to greater pressure than law school and law teachers can muster.

On the other hand, that law school causes stress and that such stress might foster anxiety, depression, and possibly even larger transitory psychological disturbances is easy to believe. Many of our students come from undergraduate disciplines where they earned certain and predictable rewards for hard study and diligent recollection. Recall the common claim of a student who got a low grade despite the fact that he had studied hard and "knew the material." In many law school classes

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students must distill general principles from the cases for themselves and must show some analytical ability on the examination. When one's practiced modes of learning no longer work, stress and anxiety are inevitable.

I wonder, too, whether the anxiety and depression that we observe in some of our law students is the unavoidable consequence of the challenge of hard learning and of confronting the looming need to prepare to behave as a lawyer. Soon after they come to law school, students must sense that however hard Contracts or Torts is, learning to be a successful practicing lawyer is harder, and that the road to success in the profession is even less clearly marked than the road to law school success.

One study suggests that the anxiety caused by medical school is smaller than that created by law school, but there are few other studies that compare law students' psychological state with the state of students who are learning other demanding professions. What do we know about military pilots or candi-

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dates for elite military units like the Seals? Or, what about Ph.D. candidates in philosophy who, at least at my school, suffer a powerful judgmental ranking by the faculty (viz. we will not recommend you for any philosophy department in the top 100)?

My anecdotal experience as an instructor pilot in the Air Force shows that student pilot anxiety (and presumably the accompanying deleterious psychological effects) greatly exceeds that in law students. Student pilots came to me for jet training with between 100 and 150 hours of flight time (including many hours of solo flight time) in propeller aircraft. We referred to their first flight in jet aircraft as a "dollar ride" because the instructor did all of the flying from the back seat in the same way that a barnstormer (who charged a dollar) might have done at a county fair in 1925. About half of my students would vomit on their dollar ride. Remember, these youngsters

were already trained in flying prop airplanes, and most went on to become successful Air Force pilots. Yet, they showed a more extreme response to stress and anxiety than I have ever seen from a law student. Between one-third and one-half of each pilot training class (but none of mine) "washed out," so their anxiety about success was justified.

Of course, a comparison to other places where students must learn a difficult skill does not explain away findings about law students, but it does raise the possibility that anxiety of the kind that we observe in law students is endemic to hard learning. It may not be caused by the way law school teaching is done and it suggests that no change in law school pedagogy will alleviate student anxiety.

The empirical studies

There are two large scale empirical studies of law students' mental health. The studies are entitled: "The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers," published in 1986, and "Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being," published in 2004.

In their 2004 study, Professors Keenon M. Sheldon and Lawrence S. Krieger (hereinafter referred to as S&K) examined one class of students at Florida State and a class at an unnamed Midwestern urban school. They examined 235 members of the entering class at Florida State in August 2000, 193 of those were examined again in March of 2001, 136 in November 2001 (second year), and 134 in November 2002 (third year). At the Midwestern school, the class entering in 2002 was tested only in the first year, in September of 2002 (255 subjects) and in April 2003 (158 subjects).

According to the standards used by S&K, students' "subjective well-being" (SWB) suffered a statistically significant decline during the first semester of law school and never recovered during law school. The study also shows a decline in "intrinsic" as opposed to "external" values and a decline in "self determined" motivation and a rise in motivation from "external" and "introjected" sources. Reasoning from the self-determination theory of optimal motivation and human thriving (i.e., that people are happier when they control their own fates and

For such a time as this by John W. Read

derive their motivation and goals from internal needs rather than external ones), the authors suggest that students' decline in mental well-being is the result of law school's redirection from internal to external values and from intrinsic to external motivation. Since a change in a student's motivation and values might be long lasting, this latter possibility (i.e., that students' newfound unhappiness comes from these changes in values and motivation) is a troubling one. It is one thing to say that law students are anxious and depressed; it is something else to say that law school has worked a long lasting change that can leave them anxious and depressed indefinitely.

The other major study that used the Beck Depression Inventory (BDI) to measure law student depression was done by Professor G. Andrew H. Benjamin et al. in 1986 at Arizona State, where three cohorts were tested. In the fall of the first year (October), the mean score of cohort 1 was 6.91 and in the spring of first year it was 6.22. In the spring of the third year, the score of cohort 2 was 8.25 and in the spring two years after graduation it was 6.83. In the summer before law school, cohort 3 had a score of 5.24 and in the spring of the first year, 8.85.

Particularly in view of the fact that the BDI test is widely regarded as a reliable measure of depression, the two studies convince me that law student depression increases during the first year of law school. However, the increase is not dramatic and some of the data are inconsistent with the hypothesis that depression increases in the first year.

Better to understand the law student scores, compare them to the scores of other groups. The mean BDI scores of law students in the spring of their first year, after suffering the allegedly traumatic effects of the first-year law school, are similar to the mean BDI scores of undergraduates and dissimilar to the mean BDI scores of abnormal groups. Studies of undergraduates report mean BDI scores of 7.28, 7.38, 7.47, and 7.58. While this is not an exhaustive list of studies of undergraduates, nothing in the studies suggested that these results were surprising or aberrant. Law student scores straddle the undergraduate scores; some are slightly higher and some are slightly lower. Contrast this with the score of heroin addicts (19.42), alcoholics (12.80), and psychiatric hospital patients (19.28 and 23.16).

When I compare the law school data to findings from other groups, I conclude that the first year of school probably makes students more anxious and depressed, but the data are not overwhelming. Some findings contradict others, and I could find no studies of students in similarly threatening environments, including studies of military pilot candidates or of officer training candidates. Perhaps a look beyond the medians would show student migration across the line of real depression that is not shown by the median numbers. At least in my opinion, the data do not live up to the claims about serious injury and do not support the exhortations for radical revision of law school teaching.

Rival hypotheses

If law students become more depressed and more anxious during the freshman year but the cause of that depression and anxiety is not that we are exalting Mammon, fame, and beauty, or that we are threatening shame, fear, and guilt, then what causes this depression and anxiety? I see at least two plausible hypotheses. First, there is the possibility that law school attracts a divergent set of students whose personalities dispose them to depression and anxiety. Second is the possibility that all hard learning causes depression and anxiety.

Capitol University Law Professor Susan Daicoff favors the first hypothesis, that our students are different: "[L]awyers' competitiveness, aggressiveness, need for academic achievement, and low interest in emotions are likely to have been present prior to law school, even though they may have been amplified and increased by the legal education process," she

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has written. While it appears that pre-law students are no more psychologically distressed than their peers, this finding is entirely compatible with the assertion that many pre-law students possess a unique set of personality traits that, in effect, sets them up for the inevitable decline in mental health that law school brings.

Not all law students will be as academically successful in law school as they were when they were undergraduates. The psychological benefits of undergraduate academic success may at the same time both explain pre-law students' lack of psychological distress and mask the particular underlying psychological needs of pre-law students that will not be met in law school. Daicoff offers the following:

"In law school, if law students equate self-worth with achievement, to the extent that self-esteem depends entirely on continual successes, a less-than-average academic performance equates with personal worthlessness. The law school experi-

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ence itself frustrates individuals' need for achievement, since formerly top students in college may now be average students in law school. Due to law students' demonstrated high needs for achievement, success, and dominance, this phenomenon may have devastating effects on their self-esteem and self-worth."

Thus, law school may be a necessary but not sufficient reason for the anxiety that we observe.

The second hypothesis, that hard learning causes psychological misery, is supported not only by my pilot anecdote but also by a small number of studies of students in other curricula. A study of graduate and professional students published in 2004 found high rates of depression, stress, and substance use among graduate and professional students. Although this study used different measuring scales than S&K and is therefore difficult to translate, the fact that 25 percent of all respondents reported a score on that depression scale that "may be indicative of depression" lends support to the hypothesis that law students are not alone. The stress that we observe in law school may be endemic to learning a demanding skill.

Conclusion

Assuming for the sake of the argument that law school causes anxiety and depression in students, I am not persuaded either that that anxiety and its associated psychological ills persist after law school or that they can be prevented by even Herculean efforts at making law school more humane. Until better data come forward, I will continue the traditional law teacher's reign of pillage and abuse. I do that happy in the belief that my hectoring will leave my students better, if momentarily sicker, lawyers.